

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

RAMON TAYLOR,

Charging Party,

v.

DELAWARE CORRECTIONAL
OFFICERS ASSOCIATION,

Respondent.

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U.L.P. No. 96-10-197

PROBABLE CAUSE DETERMINATION

Ramon Taylor, employee of the Department of Correction, is a public employee within the meaning of Section 1302(m) of the Public Employment Relations Act ("PERA" or "Act"). The Delaware Correctional Officers Association ("DCOA" or "Association") is an employee organization within the meaning of Section 1302(h) of the PERA, 19 Del.C. Chapter 13 (1994). DCOA is the exclusive representative of employees in the State's Adult Correctional Institutions within the meaning of Section 1302(i).

The Unfair Labor Practice Complaint filed on September 18, 1996, alleges that by refusing to permit bargaining unit members who are not also members of the Delaware Correctional Officers Association, to participate in a contract ratification, the Association is in violation of Article 1307, Unfair Labor Practices, (b)(1) and (3).

19 Del.C. §1307, Unfair Labor Practices, provides in relevant part:

(b) It is unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this Chapter.

(3) Refuse or fail to comply with any provision of this Chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this Chapter.

It is undisputed that DCOA refused identified bargaining unit members and either refused or would have refused unidentified bargaining unit members who are not members of the Association the opportunity to participate in a contract ratification vote.

19 Del.C. §1303, Public Employee Rights, provides:

Public employees shall have the right to:

(1) Organize, form, join, or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.

(2) Negotiate collectively or grieve through representatives of their own choosing.

(3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this Chapter or any other law of the State.

(4) Be represented by their exclusive representative, if any, without discrimination.

This undisputed fact that bargaining unit members who are not members of the Association were or would have been denied the opportunity to participate in the contract ratification vote when considered within the context of §1303 and §1307(b)(1), (b)(3), constitutes probable cause to believe that an unfair labor practice may have been committed as provided for in PERB Rule 5.

In its Answer of October 29, 1996, at paragraphs 1 through 12 of the section entitled New Matter, Respondent alleges that:

7. The Charge fails to state an unfair labor practice on which relief can be granted, as the Charge identifies no unlawful practice in

violation of 19 Del.C. §1307(b)(1), and no violation of any other portion of Chapter 13, Title 19, such as would permit relief under 19 Del.C. §1307(b)(3).

8. The Charge fails to state any legal basis for the assertion that a person who is not a member of a union has a right to vote or otherwise participate in union affairs, including union determinations as to whether to ratify a collective bargaining agreement.

9. The Charging Party waived the asserted right to vote on contract ratification by determining not to join DCOA and become a member thereof.

10. The Charging Party is estopped from asserting any right to vote, as the Charging Party admits not being a member of DCOA.

11. The Charging Party is barred by laches from asserting a right to vote, as the Charging Party asserted no such right until after the vote took place, and after the ratified contract with the Department of Correction was executed. Because of the Charging Party's delay, DCOA has changed position by executing the contract with the Department of Correction.

12. The Charging Party has no standing to assert any right to vote, as the Charging Party admits not being a member of DCOA.

The affirmative defenses set forth in the Answer are best addressed in the form of written argument and are not sufficient, at this time, to impact the probable cause determination set forth above.

The Petitioner's request for preliminary relief in the form of an injunction enjoining the implementation of the contract is denied. The Petitioner has not alleged irreparable harm and none may be presumed since, if the charge is sustained, the status quo prior to the implementation of the Agreement can be restored, if appropriate.

IT IS SO ORDERED.

DATED: November 27, 1996

/s/Charles D. Long, Jr.
CHARLES D. LONG, JR.
Executive Director
Del. Public Employment Rels. Bd.